

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOLGER LEMA-YAUCAN,

Petitioner,

-against-

SUPERINTENDENT PHILIP MELECIO,

Respondent.

ORDER

23 Civ. 3860 (NSR) (AEK)

THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.¹

Petitioner Holger Lema-Yaucan, who is incarcerated at the Wallkill Correctional Facility, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief from his New York State conviction on various grounds. ECF No. 1 (“Petition”). In a letter dated October 12, 2023, Petitioner requested that his Section 2254 petition be “held in abeyance” due to “some matters which were left unresolved and off the record which require development of a court record.” *Id.* The Court has interpreted Petitioner’s letter to say that he failed to fully exhaust certain claims before filing his petition.

For a stay to be granted, Petitioner must demonstrate that he “[1] had good cause for his failure to exhaust, [2] his unexhausted claims are potentially meritorious, and [3] there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” *Rhines v. Weber*, 544 U.S. 269, 270 (2005). Petitioner has not provided any information regarding which claim or claims have not been exhausted, or any other information concerning his failure to exhaust. Accordingly, the Court does not have sufficient information at this time to make a

¹ The Honorable Nelson S. Román referred this matter to the undersigned on May 31, 2023. ECF No. 5.

determination as to whether Petitioner had “good cause” for his failure to exhaust any of his claims, or to assess whether those claims are potentially meritorious.

Accordingly, it is HEREBY ORDERED that:

1. Petitioner’s request for a stay of these proceedings is DENIED WITHOUT PREJUDICE. By November 10, 2023, Petitioner may file a new motion to address the issues referenced above. In this submission, Petitioner should describe the unexhausted claims with specificity, and should also explain why he believes the unexhausted claims have merit and how he exercised diligence in raising those claims in New York State courts.

2. Respondent may file a response to the motion to stay the proceedings by December 1, 2023.

3. Respondent’s deadline to file and serve (1) an answer, motion, or other response to the Petition, and (2) the transcripts and briefs identified in Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts, is STAYED pending resolution of the renewed motion for a stay of the proceedings.

4. The Clerk of Court is respectfully directed to mail a copy of this order to the *pro se* Petitioner.

SO ORDERED.

Dated: October 24, 2023
White Plains, New York



ANDREW E. KRAUSE
United States Magistrate Judge